

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

SPURGEON GREEN JR.,	:	
	:	
Petitioner,	:	No. 5:07-CR-2-CAR-CHW-1
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	Proceedings Under 28 U.S.C. § 2255
	:	

**ORDER ON UNITED STATES MAGISTRATE JUDGE’S
RECOMMENDATION**

Before the Court is the United States Magistrate Judge’s Recommendation to dismiss Petitioner Spurgeon Green Jr.’s “Motion to Vacate The Applicability of 21 U.S.C. §841(b)(1)(C)” [Doc. 537]. Because Petitioner’s Motion raised a collateral attack on his conviction, the Magistrate Judge construed the Motion as seeking relief under 28 U.S.C. §2255. Petitioner has filed an Objection to the Recommendation in which he contends his Motion is not a collateral attack on his conviction [Doc. 539]. Petitioner’s argument, however, is without merit. Petitioner’s Motion clearly raises a collateral attack on the validity of his conviction, and thus the Magistrate Judge correctly construed it as a motion filed under §2255. As set forth in the Recommendation, because Petitioner has not shown he received authorization from the Eleventh Circuit prior to filing his §2255 Motion as

required by statute, his motion must be dismissed without prejudice as a second or successive §2255 motion.

Having fully considered the record in this case and investigated *de novo* those portions of the Recommendation to which Petitioner objects, the Court agrees with the findings and conclusions in the Recommendation. Petitioner's Objection [Doc. 539], is **OVERRULED**, and the Recommendation [Doc. 538] is **ADOPTED** and **MADE THE ORDER OF THE COURT**. Petitioner's Motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 [Doc. 537] is **DISMISSED without prejudice** for lack of jurisdiction as a second or successive § 2255 motion filed without authorization by the Eleventh Circuit.

SO ORDERED, this 25th day of August, 2021.

s/ C. Ashley Royal
C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT